

DAVID T. MALOOF (DM 3350)  
 THOMAS M. EAGAN (TE 1713)  
 MALOOF BROWNE & EAGAN LLC  
 411 Theodore Fremd Avenue, Suite 190  
 Rye, New York 10580-1411  
 (914) 921-1200  
*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

----- x	
NIPPONKOA INSURANCE COMPANY	:
LIMITED,	:
	:
<i>Plaintiff,</i>	:
- against -	:
	:
NORFOLK SOUTHERN RAILWAY	:
COMPANY and THE KANSAS CITY	:
SOUTHERN RAILWAY COMPANY,	:
	:
<i>Defendants.</i>	:
----- x	

**07 Civ. 10498 (DC)**

**DECLARATION OF  
 ANTHONY SMITH**

Anthony Smith hereby declares:

1. I am employed by W.K. Webster (Overseas), Ltd. ("W.K. Webster") as Director. I have held this position since 2007. I am based in WK Webster's New York City office. I make this Declaration on personal knowledge.

2. In connection with the Norfolk Southern/Kansas City Southern train derailment in the vicinity of Scroggins, Texas in April 2006, W.K. Webster acted on behalf of NipponKoa Insurance Co., Ltd. ("NipponKoa") as a claims settling agent.

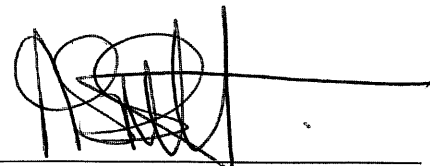
3. As background, NipponKoa insured Nippon Express USA (Illinois), Inc. ("Nippon Express"). Nippon Express issued a Waybill dated March 31, 2006 to Enplas Corporation for the carriage of, *inter alia*, 556 cartons of plastic autoparts from Yokohama, Japan to Marietta, Georgia (Ex. A). Nippon Express in turn arranged with Yang Ming Transport

Corp. for the carriage; Yang Ming issued waybill YMLUW261105283 dated March 30, 2006 to Nippon Express (as the "shipper" and "consignee") for the carriage of the Enplas cargo from Yokohama to Atlanta, Georgia (Ex. B). I understand that during the inland U.S. rail transit, the train carrying the Enplas cargo derailed. Following the derailment, Enplas and its cargo underwriter Tokio Marine submitted a claim against Nippon Express for damage to the Enplas autoparts cargo. NipponKoa's own surveyor investigated and concluded that the cargo suffered damages of \$135,281.00 (invoice value), and that the loss occurred during the derailment (Ex. C, pp. 13-14). Tokio Marine claimed against Nippon Express for damages of \$147,717 (based on insured value). A true copy of Enplas' subro receipt submitted by Tokio Marine is attached as Ex. D.

4. On behalf of NipponKoa we negotiated with Tokio Marine's New York office and ultimately resolved this claim against Nippon Express for the sum of \$100,000 (a true copy of the settlement check is attached as Ex. E). In return, Enplas' underwriters issued an assignment in the favor of NipponKoa for its cargo claim (a true copy of the assignment is attached as Ex. F). Given the exposure of Nippon Express for liability of well in excess of \$100,000, I submit a settlement of \$100,000 was very reasonable.

I declare that the foregoing is true and correct under the penalty of perjury under the laws of the United States.

Dated: October 14<sup>TH</sup>, 2009  
New York, New York

A handwritten signature in black ink, appearing to be "Anthony Smith", written over a horizontal line.

Anthony Smith